

result of a decision by a court, board of arbitration, or the like.

(g) *Gifts and inheritances.* A gift is something you receive which is not repayment to you for goods or services you provided and which is not given to you because of a legal obligation on the giver's part. An inheritance is something that comes to you as a result of someone's death. It can be in cash or in kind, including any right in real or personal property. Gifts and inheritances occasioned by the death of another person, to the extent that they are used to pay the expenses of the deceased's last illness and burial, as defined in paragraph (e) of this section, are not considered income.

(h) *Support and maintenance in kind.* This is food, or shelter furnished to you. Our rules for valuing this income depend on your living arrangement. We use one rule if you are living in the household of a person who provides you with both food and shelter. We use different rules for other situations where you receive food or shelter. We discuss all of the rules in §§416.1130 through 416.1147.

[45 FR 65547, Oct. 3, 1980, as amended at 56 FR 36000, July 30, 1991; 59 FR 43471, Aug. 24, 1994; 70 FR 6345, Feb. 7, 2005]

**§416.1123 How we count unearned income.**

(a) *When we count unearned income.* We count unearned income at the earliest of the following points: when you receive it or when it is credited to your account or set aside for your use. We determine your unearned income for each month. We describe exceptions to the rule on how we count unearned income in paragraphs (d), (e) and (f) of this section.

(b) *Amount considered as income.* We may include more or less of your unearned income than you actually receive.

(1) We include more than you actually receive where another benefit payment (such as a social security insurance benefit) (see §416.1121) has been reduced to recover a previous overpayment. You are repaying a legal obligation through the withholding of portions of your benefit amount, and the amount of the debt reduction is also part of your unearned income. *Excep-*

*tion:* We do not include more than you actually receive if you received both SSI benefits and the other benefit at the time the overpayment of the other benefit occurred and the overpaid amount was included in figuring your SSI benefit at that time.

*Example:* Joe, an SSI beneficiary, is also entitled to social security insurance benefits in the amount of \$200 per month. However, because of a prior overpayment of his social security insurance benefits, \$20 per month is being withheld to recover the overpayment. In figuring the amount of his SSI benefits, the full monthly social security insurance benefit of \$200 is included in Joe's unearned income. However, if Joe was receiving both benefits when the overpayment of the social security insurance benefit occurred and we then included the overpaid amount as income, we will compute his SSI benefit on the basis of receiving \$180 as a social security insurance benefit. This is because we recognize that we computed his SSI benefit on the basis of the higher amount when he was overpaid.

(2) We also include more than you actually receive if amounts are withheld from unearned income because of a garnishment, or to pay a debt or other legal obligation, or to make any other payment such as payment of your Medicare premiums.

(3) We include less than you actually receive if part of the payment is for an expense you had in getting the payment. For example, if you are paid for damages you receive in an accident, we subtract from the amount of the payment your medical, legal, or other expenses connected with the accident. If you receive a retroactive check from a benefit program other than SSI, legal fees connected with the claim are subtracted. We do not subtract from any taxable unearned income the part you have to use to pay personal income taxes. The payment of taxes is not an expense you have in getting income.

(4) In certain situations, we may consider someone else's income to be available to you, whether or not it actually is. (For the rules on this process, called deeming, see §§416.1160 through 416.1169.)

(c) *In-kind income.* We use the current market value (defined in §416.1101) of in-kind unearned income to determine its value for SSI purposes. We describe some exceptions to this rule in

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## §416.1124

§§416.1131 through 416.1147. If you receive an item that is not fully paid for and are responsible for the balance, only the paid-up value is income to you.

*Example:* You are given a \$1500 automobile but must pay the \$1000 due on it. You are receiving income of \$500.

(d) *Retroactive monthly social security benefits.* We count retroactive monthly social security benefits according to the rule in paragraph (d)(1) of this section, unless the exception in paragraph (d)(2) of this section applies:

(1) *Periods for which SSI payments have been made.* When you file an application for social security benefits and retroactive monthly social security benefits are payable on that application for a period for which you also received SSI payments (including federally-administered State supplementary payments), we count your retroactive monthly social security benefits as unearned income received in that period. Rather than reducing your SSI payments in months prior to your receipt of a retroactive monthly social security benefit, we will reduce the retroactive social security benefits by an amount equal to the amount of SSI payments (including federally-administered State supplementary payments) that we would not have paid to you if your social security benefits had been paid when regularly due rather than retroactively (see §404.408b(b)). If a balance is due you from your retroactive social security benefits after this reduction, for SSI purposes we will not count the balance as unearned income in a subsequent month in which you receive it. This is because your social security benefits were used to determine the amount of the reduction. This exception to the unearned income counting rule does not apply to any monthly social security benefits for a period for which you did not receive SSI.

(2) *Social security disability benefits where drug addiction or alcoholism is a contributing factor material to the determination of disability.* If your retroactive social security benefits must be paid in installments because of the limitations on paying lump sum retroactive benefits to disabled recipients whose drug addiction or alcoholism is a contributing factor material to the de-

termination of disability as described in §404.480, we will count the total of such retroactive social security benefits as unearned income in the first month such installments are paid, except to the extent the rule in paragraph (d)(1) of this section would provide that such benefits not be counted.

(e) *Certain veterans benefits.* (1) If you receive a veterans benefit that includes an amount paid to you because of a dependent, we do not count as your unearned income the amount paid to you because of the dependent.

(2) If you are a dependent of an individual who receives a veterans benefit and a portion of the benefit is attributable to you as a dependent, we count the amount attributable to you as your unearned cash income if—

(i) You reside with the individual who receives the veterans benefit, or

(ii) You receive your own separate payment from the Department of Veterans Affairs.

(f) *Uniformed service compensation.* We count compensation for services performed as a member of a uniformed service (as defined in §404.1330 of this chapter) as received in the month in which it is earned.

(Reporting and recordkeeping requirements in paragraph (b) have been approved by the Office of Management and Budget under control number 0960-0128)

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### §416.1124 Unearned income we do not count.

(a) *General.* While we must know the source and amount of all of your unearned income for SSI, we do not count all of it to determine your eligibility and benefit amount. We first exclude income as authorized by other Federal laws (see paragraph (b) of this section). Then we apply the other exclusions in the order listed in paragraph (c) of this section to the rest of your unearned income in the month. We never reduce your unearned income below zero or apply any unused unearned income exclusion to earned income except for the